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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-539

ZENITH RADIO CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Customs and Patent Appeals

BRIEF FOR BETHLEHEM STEEL CORPORATION AS AMICUS CURIAE

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QUESTION PRESENTED

Section 303(a) of the Tariff Act of 1930, as amended, 19 U. S. C. § 1303, requires that the United States levy a duty upon imported articles whose manufacture, production, or export is subsidized by a bounty or grant bestowed by or in the country of origin. The amount of the duty is equal to the net amount of the bounty or grant. The question presented is whether Section 303(a) requires the exaction of a countervailing duty upon imported articles that are not subject to an otherwise-applicable tax in their country of origin because they are shipped for export.

INTEREST OF BETHLEHEM STEEL CORPORATION [1]

Bethlehem Steel Corporation is an integrated steel producer engaged in the manufacture, fabrication, and sale of steel and steel products. It is the second largest producer of steel in the United States. Principal markets of Bethlehem for steel products are the construction, transportation, service center, processor, and other markets. Bethlehem distributes steel products principally through its own sales organization, which has sales offices, mill depots, or supply stores in more than 80 locations in the United States. It sells significant amounts of steel products to jobbers, dealers, and steel service centers.

Bethlehem competes in the sale of steel and steel products within the United States against foreign steel producers and importers of foreign steel. Since 1960, foreign steel production capacity and foreign steel production have increased dramatically in comparison with increases in domestic steel production capacity and production. Steel production capacity of the countries of the European Economic Community increased from 119 million tons in 1960 to 219 million tons in 1976, and actual steel production increased from 107 million tons to 147 million tons in the same period. In 1976, these European steel producers exported to the United States about three million tons of finished and semi-finished steel products. In 1977, United States imports of steel and steel products from these European countries increased each quarter, rising to an annual rate of about eight million tons during July and August and accounting for approximately 7.5% of total domestic consumption of these products.

1. Pursuant to Rule 42(1) of the rules of this Court, consent to file this brief *amicus curiae* has been obtained from the Solicitor General and from Zenith Radio Corporation.

Bethlehem, along with the other domestic United States steel producers, has long competed with steel imports from European countries which are subsidized and protected by the governments of the producing nations. One domestic producer, United States Steel Corporation, has commenced litigation to challenge the forgiveness of value-added taxes on exports of steel from several European countries. This abatement of value-added taxes is analogous to the forgiveness by the Japanese government of the excise tax on Japanese exports of consumer electronic products, the subject of the petition for writ of certiorari by Zenith Radio Corporation in support of which this brief is filed.

The basic question posed by this case is of the deepest concern to Bethlehem and the entire domestic steel industry. Bethlehem is likely to sustain substantial long-term harm if the decision of the court below is allowed to stand.

DISCUSSION

The Court of Customs and Patent Appeals' *Zenith* decision (Appendix C to Petition for a Writ of Certiorari) brings to mind Mr. Justice Holmes' famous remarks from his dissent in *Northern Securities Co.* v. *U. S.*, 193 U. S. 197, 400-401 (1904):

> "Great cases, like hard cases, make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend. What we have

to do in this case is to find the meaning of some not very difficult words."

The settled principles of law which should have compelled affirmance of the Customs Court's decision (Appendix A to the Petition for a Writ of Certiorari) abounded in this case. However, the majority of the Court of Customs and Patent Appeals undoubtedly preceived a Government victory as being politically expedient,[2] which somehow permitted it (1) to *avoid* this Court's holding in *Downs* v. *U. S.*,[3] 187 U. S. 496 (1903), that tax remissions on exports are bounties or grants, (2) to *ignore* this Court's teaching in *Nicholas & Co.* v. *U. S.*, 249 U. S. 234 (1919), that Congress wished to speak in as broad terms as possible in dealing with bounties or grants, in order to capture and offset all possible benefits conferred on exportation, and (3) to *contravene* Congress' clear overruling of the Court of Customs and Patent Appeals' decision in *United States* v. *Hammond Lead Products, Inc.*, 440 F. 2d 1024 (C. C. P. A.), *cert. denied*, 404 U. S. 1005 (1971), and

2. Note, however, the remarks of the Honorable Russell B. Long, Chairman of the Senate Finance Committee, made during a radio interview one week before the Court of Customs and Patent Appeals' *Zenith* decision (printed in the Daily Report for Executives, No. 141, Pages J-1 and J-2 (July 21, 1977)), and quoted in the *amicus curiae* brief of United States Steel Corporation at p. 4. In addition, Senator Long said:

> "The Japanese are upset about it and want to do something about it immediately. The case should be heard by the higher courts and it will appealed no matter how it is decided in the court now. It will be appealed beyond that. It will eventually find its way to the Supreme Court—the sooner the better. Frankly, I think that the Court, if it does its duty, will be required to sustain that decision. The effect of it will be that the United States will be in a far better negotiating position on these trade negotiations in Geneva."

3. Judge Miller's powerful dissent in *Zenith* explodes the majority's efforts to relegate this Court's holding in *Downs* to mere *obiter*. (Appendix C to the Petition for a Writ of Certiorari, pages 89a-99a).

to find that the Secretary of the Treasury had the discretion not to countervail bounties and grants if he so chose.

We will not burden this Court with a reiteration of the strong arguments of Zenith and the other two *amici curiae* in support of the granting of the petition. Suffice it to say that we agree with their arguments and we respectfully join in their prayer that a writ of certiorari be issued.

CONCLUSION

For the reasons stated herein, in the petition, and in the *amicus curiae* briefs of the Committee to Preserve American Color Television and United States Steel Corporation, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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